1) Heading of the Part: Income Tax

2) Code Citation: 86 Ill. Adm. Code 100

3) Section Number: 100.2655 — Proposed Action: New Section

Section Number:	Proposed Action:
100.2655	New Section

4) Statutory Authority: 35 ILCS 5/203(b)(2)(M) and 5/1401

5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance for corporations that are "financial organizations" to compute the subtraction allowed to them for interest income received from loans they make that are secured by eligible property located in an enterprise zone or river edge redevelopment zone.

6) Published studies or reports and sources of underlying data used to compose this rulemaking: None

7) Will this rulemaking replace any emergency rulemaking currently in effect? No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this rulemaking contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? Yes

Section Number	Proposed Action	IL Register Citation
100.2406	New Section	31 Ill. Reg. 15240; November 16, 2007
100.3380	Amendment	32 Ill. Reg 798; January 18, 2008
100.9700	Amendment	32 Ill. Reg 798; January 18, 2008
100.5040	Amendment	32 Ill. Reg. 4574; April 4, 2008
100.3500	Amendment	32 Ill. Reg. 5936; April 11, 2008
100.9730	New Section	32 Ill. Reg. 5936; April 11, 2008
100.2455	New Section	

11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 524-3951

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Providing guidance on the computation of this subtraction could help small businesses, municipalities and not-for-profit corporations with property located in an enterprise zone or river edge redevelopment zone to obtain loans at lower interest rates by making financial organizations aware of the tax benefits of making loans secured by that property.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of the Proposed Amendment begins on the next page:

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section 100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))

a) A corporation that is a "financial organization" within the meaning of IITA Section 304(c) may subtract *an amount included in its taxable income as interest income from a loan or loans made by such taxpayer to a borrower, to the extent that such a loan is secured by property which is eligible for the enterprise zone investment credit* or the river edge redevelopment zone investment credit under IITA Section 201(f), as amended by P.A. 94-1021, effective July 12, 2006

b) Eligible Property. For purposes of this section, "Eligible Property" shall mean:

1) for tax years ending prior to June 8, 1984 (the effective date of Public Law 83-1114), property for which the borrower had successfully claimed the credit under IITA Section 201(h) (prior to recodification as IITA Section 201(f) by Public Act 85-731); and

2) for tax years ending on or after June 8, 1984, property that is "qualified property" as defined under IITA Section 203(f)(2) and Section 100.2110(e) or that would have been qualified property under those provisions if placed in service in an enterprise zone at the time it was new by a taxpayer otherwise eligible to claim the credit under IITA Section 203(f).

c) Portion of Loan Secured by Eligible Property. *To determine the portion of a loan that that is secured by Eligible Property, the entire principal amount of the loan between the taxpayer and the borrower should be divided into the basis of the Eligible Property which secures the loan, using for this purpose the original basis of such property on the date it was placed in service in the enterprise zone or the river edge redevelopment zone. The subtraction modification available to the taxpayer in any year under this* *section shall be the portion of the total interest paid by the borrower with respect to such loan attributable to the Eligible Property as calculated under the previous sentence.* There is no limitation to the length of time for which the subtraction may be taken with respect to a particular loan.

d) Basis. For purposes of the computation in subsection (c), the basis of Eligible Property shall be its borrower's basis in the Eligible Property for federal income tax purposes, including the costs of any improvements or repairs included in such basis, but without adjustment for depreciation or IRC Section 179 deductions claimed with respect to such property.

e) Examples. Below are examples of various fact situations and the Department's interpretation of how this subtraction would apply:

1) Example 1. Bank lends $1,000 to Borrower, secured by Eligible Property with a basis of $900. The portion of the loan secured by Eligible Property is the $900 basis of the borrower in Eligible Property divided by the $1,000 principal amount of the loan, or 90%.

2) Example 2. Bank lends $1,000 to Borrower, secured by Eligible Property with a basis of $1,000 and by other property with a basis of $2000. The portion of the loan secured by Eligible Property is the $1,000 basis of the borrower in Eligible Property divided by the $1000 principal amount of the loan, or 100%. The existence of other property securing the loan is irrelevant.

3) Example 3. In 1996, ABC Company built a new warehouse in an enterprise zone at the cost of $1,000,000 and is able to claim the enterprise zone investment credit under IITA Section 201(f). ABC takes out a $2,000,000 loan at Bank A, which then places a lien on the property. In 1999, when the warehouse had an adjusted basis (after depreciation) of $900,000 and a fair market value of $1,300,000 ABC refinanced the loan for the same principal amount, but at a lower interest rate. For both loans, the portion of the loan secured by Eligible Property is the $1,000,000 original basis in the warehouse divided by the $2,000,000 principal. Neither the adjusted basis after depreciation nor the fair market value are relevant to the computation for the refinanced amount.

4) Example 4. The facts are the same as in Example 3, except that, in 2001, ABC Company again refinanced the loan, this time at Bank B (unrelated to Bank A). There was no change in the principal amount. Bank B takes a lien on the warehouse to secure the new loan. The portion of the Bank B loan that qualifies for the subtraction modification is 50% because the principal amount of the loan and ABC Company's original basis in the property remain unchanged.

5) Example 5. Same facts as in Example 4 except that Bank B purchased the refinanced loan from Bank A. The loan is not refinanced. ABC continues to pay the same amount, but now pays Bank B rather than Bank A.

Bank B does not qualify for the subtraction modification, which is allowed only with respect to a loan "made by *such taxpayer* to a borrower" and Bank B did not make the loan.

6) Example 6: X Corp., headquartered outside the river edge redevelopment zone, builds a $100,000,000 warehouse in a river edge redevelopment zone in 2007 and claims the river edge redevelopment zone credit. X takes out a 20-year loan at Bank A in the principal amount of $1,000,000. In 2017, X takes out a new $1,750,000 loan at the same bank and uses $1,000,000 of the proceeds to pay off the old loan and spends the remaining $750,000 to renovate its corporate headquarters located outside the zone. Bank A takes a lien on the warehouse as security for each loan. Because X Corp.'s $100,000,000 basis in the warehouse exceeds the principal amount of each loan, Bank A is entitled to subtract the entire amount of interest received from each loan. The portion of the loan whose interest may be subtracted need not be reduced by the $750,000 portion not spent inside the river edge redevelopment zone because use of the borrowed funds is not relevant to the subtraction.

7) Example 7. The F Church, located in an enterprise zone, decides to borrow $500,000 in 2003 from Bank A for roof repairs and a new addition. The church cannot claim the enterprise zone credit because it did not have unrelated business taxable income and was not required to file an IL-990-T for 2003.

Bank A may claim the subtraction modification. The loan is secured by property which is either qualified property or could be qualified property, and the property has been placed in service within an enterprise zone.

(Source: Added at 32 Ill. Reg. ______, effective ____________)